

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 21-cr-20264

vs.

HON. DENISE PAGE HOOD

YLLI DIDANI,

Defendant.

MOTION FOR PRETRIAL DETERMINATION AS TO JURISDICTION

The United States of America, by and through its undersigned attorneys, hereby files this motion requesting that the Court make a pre-trial determination regarding jurisdiction, specifically that the three vessels in this criminal case are vessels “subject to the jurisdiction of the United States,” and in support of its motion, states:

1. The defendant, Ylli Didani, is charged in a superseding indictment with Count One, conspiracy to distribute controlled substances in violation of 21 U.S.C. §§ 841 and 846; Count Two, conspiracy to possess with intent to distribute and distribute a controlled substance on board a vessel subject to the jurisdiction of the United States in violation of 46 U.S.C. §§ 70503(a) and 70506(b); and Count

Three, conspiracy to launder monetary instruments in violation of 18 U.S.C. § 1956(h). (ECF No. 38, PageID.153).

2. At trial, for Count Two, the government intends to prove that Didani and co-conspirators utilized containerships to transport large quantities of cocaine from South America to Europe.

3. In 2019 and 2020, law enforcement effected multiple seizures of cocaine hidden in containers on containerships after the containerships arrived in Europe.

4. In three of those seizures, the containerships carrying the cocaine (the MSC Anisha R, the CMA CGM Jean Gabriel, and the Cartegena Express) were registered in foreign countries: The Republic of Liberia, the Republic of Malta, and Germany, respectively.

5. Jurisdiction of the United States with respect to a vessel under Title 46, Chapter 705, is not an element of an offense. Instead, jurisdictional issues arising under this chapter are to be determined solely by the trial judge. 46 U.S.C. §70504(a).

6. The phrase “vessel subject to the jurisdiction of the United States” includes a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States. 46 U.S.C. §70502(c)(1)(C).

7. In this case, the Republic of Liberia, the Republic of Malta, and Germany have consented or waived objection to the enforcement of United States law by the United States over the three vessels at issue.

8. Pursuant to 46 U.S.C § 70504(a), the government respectfully requests that the Court make a pre-trial determination that the vessels in this criminal case, specifically the MSC Anisha R, the CMA CGM Jean Gabriel, and the Cartegenra Express, are vessels subject to the jurisdiction of the United States.

Respectfully submitted,

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Dated: October 25, 2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 21-cr-20264

v.

HON. DENISE PAGE HOOD
United States District Judge

D-1 YLLI DIDANI,

Defendant.

**GOVERNMENT'S BRIEF IN SUPPORT OF MOTION FOR PRETRIAL
DETERMINATION AS TO JURISDICTION**

I. INTRODUCTION

From at least 2015 until his arrest in March 2021, the defendant, Ylli DIDANI directed an expansive transnational cocaine distribution conspiracy that in part, utilized containerships to transport thousands of kilograms of cocaine from South America to Europe.

DIDANI is charged in a superseding indictment with Count One, conspiracy to distribute controlled substances in violation of 21 U.S.C. §§ 841 and 846; Count Two, conspiracy to possess with intent to distribute and distribute a controlled substance on board a vessel subject to the jurisdiction of the United States in violation of 46 U.S.C. §§ 70503(a) and 70506(b); and Count Three, conspiracy to

launder monetary instruments in violation of 18 U.S.C. § 1956(h). (ECF No. 38, PageID.153-174). With respect to Count Two, the government seeks a pretrial finding from the Court that certain vessels, as they pertain to Count Two, specifically the MSC Anisha R, the CMA CGM Jean Gabriel, and the Cartegena Express are vessels subject to the jurisdiction of the United States.

II. RELEVANT FACTUAL BACKGROUND

A. Vessel MSC Anisha R – Registered in the Republic of Liberia

Beginning in November 2019, DEA Detroit began analyzing lawfully obtained information from an Apple iCloud account utilized by DIDANI. During this analysis, investigators located two photographs of emails between a company called FRUBANAL AG, located in Hamburg, Germany and a company called BIOEXPOR SA, located in Ecuador. While reviewing DIDANI's iCloud data, investigators also located multiple photographs and videos showing a step-by-step process of a bulk shipment of kilogram quantities of cocaine being hidden in boxes of bananas and then loaded onto a shipping container. Photographs depicted kilograms of cocaine wrapped in brown plastic and green plastic. Pictured insignias taped to the top of the cocaine packages displayed an image of a black semi-automatic handgun.

The kilogram quantity packages were then shown being placed inside of cardboard boxes labeled "Bioban Bananas." The cocaine packages were mixed

with batches of bananas and wrapped in plastic labeled “BIOEXPOR.” Additional photographs showed the sealed Bioban Banana boxes being stacked onto pallets and loaded into a cargo container. On the pallets of stacked banana boxes were white numbered labels. The company names “FRUBANAL” and “BIOEXPOR” were also on the labels.

The photographs located by investigators of the cocaine shipment were identified as being sent by DIDANI to an unidentified co-conspirator. On November 21, 2019, DEA Detroit sent the photographs and videos of the cocaine shipment to DEA agents in the Netherlands.

In December 2019, DEA Detroit was advised that on August 11, 2019, 753 kilograms of cocaine was seized from a containership in the Port of Rotterdam, Netherlands. The cocaine shipment was located inside of a shipping container TTNU8089029 on the vessel MSC Anisha R. The cocaine was hidden in a shipment of bananas shipped from Guayaquil, Ecuador from BIOEXPOR with the consignee being FRUBANAL AG in Hamburg, Germany.

Law enforcement in the Netherlands took multiple photographs of the cocaine that was seized. The photographs matched the photographs in DIDANI’s iCloud account depicting boxes/pallets of bananas, and green/brown wrapped kilogram quantities of cocaine with the black semi-automatic pistol insignia on top. Additionally, agents located a screen shot taken by DIDANI of the MSC

website, “MSC.com.” The screen shot was the booking page for the vessel MSC Anisha R. showing a direct transit from Ecuador to the Netherlands.

In DIDANI’s iCloud account, investigators also located a photograph of what appeared to be two Dutch Police Officers wearing face masks standing in front of a shipping container. The number on the container was TTNU8089029, the same number of the container in which the 753 kilograms of cocaine was seized. At the time of the seizure, the MSC Anisha R was registered in the Republic of Liberia.

B. Vessel CMA CGM Jean Gabriel – Registered in the Republic of Malta

In February 2020, agents located a WhatsApp thread in DIDANI’s iCloud account between DIDANI and a known co-conspirator who was in Ecuador. On February 1, 2020, the co-conspirator sent DIDANI a text message stating there was a “total of 657 left.” On February 2, 2020, DIDANI replied with a message stating to send the video. The co-conspirator then sent three videos to DIDANI. The first video showed unknown males boarding what appeared to be a large containership and breaking into a sealed shipping container on the containership. In the video, an unknown male wearing camouflage fatigue pants and a black spider man mask cut open the plastic wrap holding together a pallet of produce that was inside the container. The produce was discarded to make a void in the rear of the container. The second video showed the unknown males loading 14 large black bags wrapped

in rope into the empty void in the container. The third video showed the unknown males re-securing the shipping container with a fraudulent replacement seal to make the container appear that it had not been tampered with. The video panned up to show the container number, TTNU8638520. From the totality of the videos, investigators suspected that the large black bags being loaded into the container contained large amounts of narcotics, most likely cocaine.

DEA Detroit learned that container TTNU8638520 depicted in the videos was at the time aboard the containership, CMA CGM Jean Gabriel, and was in transit originating from Ecuador in route to the Port of Rotterdam, Netherlands. This information was provided to DEA agents in the Netherlands, who then provided the information to Dutch National Police Port Authorities. On February 22, 2020, Dutch Port Authorities located container TTNU8638520 aboard CMA CGM Jean Gabriel. Hidden inside the container was 14 large duffel bags depicted in the videos sent to DIDANI. Inside of the duffel bags, were 644 kilograms of cocaine that were seized by law enforcement. At the time of the seizure, the CMA CGM Jean Gabriel was registered in the Republic of Malta.

C. Vessel Cartegena Express – Registered in Germany

On April 2, 2020, agents located two photographs in DIDANI's iCloud account that depicted container seals that are used to secure a cargo container prior to the container being shipped to its destination. Also, in DIDANI's iCloud

account were photographs depicting three seals that had been cut from a container and three fraudulent replacement seals, identical to the original seals. Investigators also located four videos depicting shipping container HLXU6756403 being broken into while in transit on a containership.

The videos depicted an unknown male wearing black and white camouflage fatigues and a facemask, utilizing bolt cutters to shear off the three container lock seals and then accessing container HLXU6756403. The videos showed that inside the container were multiple green 50-gallon drums with the label “Quicornac.” Another video showed multiple unknown individuals load numerous large rectangular black bags secured with rope into the container and behind the green 50-gallon drums. The videos also showed an unknown male close the container and re-secure it with three container lock seals identical to those that were previously cut off.

Agents were able to obtain the bill of lading for container HLXU6756403, which listed the seal numbers for the container and the seal numbers on the bill of lading matched the three seal numbers from the photographs in DIDANI’s iCloud account. Agents also learned that container HLXU6756403 was placed on to the containership, “Limari” on March 11, 2020, in Peru. On March 26, 2020, container HLXU6756403 was transferred to the containership, Cartagena Express, in Cartagena, Colombia and was scheduled to arrive in the Port of Rotterdam,

Netherlands on April 7, 2020. DEA Detroit provided this information to DEA agents in the Netherlands, who then provided the information to the Dutch National Police and Port Authorities. On April 7, 2020, Dutch Authorities located container HXLU6756403 aboard the vessel Cartagena Express in the Port of Rotterdam. Authorities conducted a search of the container and located the black bags depicted in the videos in DIDANI's iCloud account. Inside of the duffle bags, Dutch Authorities located and seized 1000 kilograms of cocaine. At the time of the seizure, the Cartagena Express was registered in Germany.

III. PRETRIAL DETERMINATION

DIDANI is charged in count two of a superseding indictment with conspiracy to possess with intent to distribute and distribute a controlled substance on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a) and 70506(b). (ECF No. 38, PageID.158-159).

Since the MSC Anisha R, the CMA CGM Jean Gabriel, and the Cartagena Express in this criminal case, are vessels subject to the jurisdiction of the United States, the government moves the Court, pretrial, to make that determination.

“Jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.” 46 U.S.C. §70504(a). Accord *United States v. Garza*, 516 F.3d 1266, 1271 (11th Cir. 2008);

United States v. Miranda, 780 F.3d 1185, 1192-93 (D.C. Cir. 2015); *United States v. Brant-Epimelio*, No. 8:09-cr-404-T-23TGW, 2010 WL 557283, at *3 (M.D. Fla. Feb. 11, 2010). “[T]he term ‘vessel subject to the jurisdiction of the United States’ includes ... a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States.” 46 U.S.C. §70502(c)(1)(A),(C). Accord *United States v. Brant-Epimelio*, 429 F. App’x 860, 862 (11th Cir. 2011). “Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States ... is proved conclusively by certification of the Secretary of State or the Secretary’s designee.” *Id.* § 70502(c)(2)(B). Accord *Brant-Epimelio*, 429 F. App’x at 862.

As part of discovery in this matter, the United States produced copies of the certifications contemplated by section 70502(c)(2)(B), which bear the signature of the United States Secretary of State and his designee. (Exhibit 1, Certification Cartegena Express; Exhibit 2, Certification CMA CGM Jean Gabriel; Exhibit 3, Certification MSC Anisha R). Among other things, the Certifications set forth that the Government of the United States requested that the respective Governments (Republic of Liberia, Republic of Malta, and Germany) waive “their jurisdiction for the enforcement of United States law by the United States with respect to” the specified vessels. The Certifications also set forth that the Governments for the

Republic of Liberia and Germany notified the Government of the United States that they had no objection to enforcement of United States law over the specified vessels and that the Government for the Republic of Malta notified the Government of the United States that they had waived their right to exercise jurisdiction over the specified vessel.

As a result, the Secretary of State's certifications prove conclusively that the three vessels in this criminal case are vessels subject to the jurisdiction of the United States. Because the Secretary of States' Certifications make clear that the Government of the Republic of Liberia (MSC Anisha R), the Government of the Republic of Malta (CMA CGM Jean Gabriel), and the Government of Germany (Cartegena Express), waived their right to exercise primary jurisdiction over the respective vessels, 46 U.S.C. § 70502(c)(1)(C), and because the waivers by the Government of the Republic of Liberia, the Government of the Republic of Malta, and the Government of Germany are proved conclusively by the respective Certifications, 46 U.S.C. § 70502(c)(2)(B), as it relates to count two of the superseding indictment, the MSC Anisha R, the CMA CGM Jean Gabriel, and the Cartegena Express are vessels subject to the jurisdiction of the United States.

IV. CONCLUSION

Based on the foregoing reasons, the United States respectfully requests that the Court find pretrial that the vessels in this criminal case, specifically the MSC

Anisha R, the CMA CGM Jean Gabriel, and the Cartegena Express are vessels
subject to the jurisdiction of the United States.

Respectfully submitted,

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Dated: October 25, 2022

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2022, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

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